

Document 1

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA**

DARRYL ORRIN BAKER,

Plaintiff,

- v -

UNITED STATES, et al.,

Defendants.

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:
:
:
:
:

Civil Action No. 05-147

DECLARATION OF JOYCE HORIKAWA

I, Joyce M. Horikawa, make the following declaration under penalty of perjury:

1. I am a Senior Attorney Advisor employed by the United States Department of Justice, Federal Bureau of Prisons, at the Northeast Regional Office, in Philadelphia, Pennsylvania. I have been employed in this capacity since approximately April 8, 2001. Pursuant to my official duties, I have access to records maintained in the ordinary course of business at the Federal Bureau of Prisons Northeast Regional Office, including all records reflecting an inmate's attempts to seek and exhaust administrative remedies under the Administrative Remedy Procedure for Inmates, 28 C.F.R. § 542.10 et seq., as well as under the Federal Tort Claims Act.

2. In order to exhaust all process under the Administrative Remedy Procedure for Inmates, an inmate must first attempt to informally resolve the dispute with institution staff. 28 C.F.R. § 542.13. If informal resolution efforts fail, the inmate may raise his or her complaint to the Warden of the institution in which he or she is confined, within 20 calendar days of the date that the basis of the complaint occurred. 28 C.F.R. §§ 542.13, 542.14. If the Warden denies the administrative remedy request, the inmate may file an appeal with the Regional Director within 20 calendar days of the date of the Warden's response. 28 C.F.R. §§ 542.14, 542.15. If the Regional Director denies the appeal, the inmate may appeal that decision to the General Counsel

of the Federal Bureau of Prisons within 30 calendar days from the date of the Regional Director's response. See 28 C.F.R. §§ 542.14 and 542.15. The administrative remedy process is not considered to be "exhausted" until an inmate's final appeal is denied by the Bureau of Prisons General Counsel.

3. In the ordinary course of business, computerized indexes of all administrative requests and appeals filed by inmates are maintained in the Bureau of Prisons computerized data base so that rapid verification may be made as to whether an inmate has exhausted the administrative remedy process on a particular issue.

4. On or about December 7, 2005, in connection with the above-captioned litigation, I accessed the computerized indexes of all administrative remedies filed by inmate Darryl Orrin Baker, Register Number 19613-039, the Plaintiff in the above-captioned case, to determine whether he attempted to exhaust the highest level of administrative appeal on the issues raised in this case.

5. Following a search of the indexes of all administrative remedies filed by Plaintiff, I determined he had not exhausted his available administrative remedies on any issue raised in the above-captioned civil action.

6. I am also familiar with Bureau of Prisons policies and procedures pertaining to the processing of administrative tort claims asserted under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 2671 et seq., and submitted to the Bureau of Prisons under the provisions set forth at 28 C.F.R. §§ 543.30-.32.

7. The Bureau of Prisons' regulations applicable to administrative tort claims asserted under the FTCA require claims to be submitted first to the Regional Office in the region where

the basis for the claim occurred. 28 C.F.R. § 543.31©).

8. In this case, inmate Baker alleges that while he was housed at FCI McKean, he was denied adequate medical attention. He also alleges after he submitted an administrative tort claim alleging inadequate medical attention, he was subjected to retaliatory treatment by staff. Therefore, if inmate Bradley submitted an administrative tort claim alleging negligent medical treatment or retaliation for filing an administrative tort claim, he would have submitted those administrative tort claims to the Federal Bureau of Prisons Northeast Regional Office. See 28 C.F.R. §§ 503.2(b), 543.31©).

9. Under the applicable regulations, the denial of a claim by either the Regional Counsel or Office of the General Counsel constitutes a final administrative action. 28 C.F.R. § 543.32(g).

10. In the ordinary course of business, records of administrative tort claims filed with the regional offices of the Federal Bureau of Prisons are maintained on a nationwide database so that rapid verification can be made as to whether an individual has attempted to exhaust his or her available administrative tort claim remedy pursuant to the procedures set forth at 28 C.F.R. § 543.30, et seq. As an attorney assigned to the Federal Bureau of Prisons Northeast Regional Counsel's Office, I have access to the nationwide administrative tort claim database.

11. On or about December 8, 2005, in connection with the above-captioned case, I accessed the administrative tort claim database referenced above to determine whether inmate Baker exhausted or attempted to exhaust his available remedies under the administrative tort claim procedures described above for any of the allegations raised in the complaint.

12. After accessing the administrative tort claim index, I determined that inmate Baker, exhausted his available administrative tort remedies for all of the medical issues raised in this

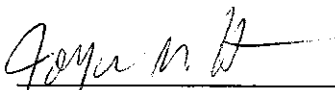
civil action. However, he has not exhausted his available administrative tort remedies regarding his claims of retaliation for filing an administrative tort claim.

13. Attached hereto, please find true and correct copies of the following documents which are maintained in the ordinary course of business in the Bureau of Prisons Northeast Regional Office:

- a. Public Information Data Sheet for inmate Darryl Orrin Baker, Register Number 19613-039;
- b. Administrative Tort Claim, Case Number TRT-NER-2004-03801;
- c. Memorandum denying Administrative Tort Claim Number TRT-NER-2004-03801;
- d. Acknowledgment of Denial of Administrative Tort Claim;

I declare the foregoing is true and correct to the best of my knowledge and belief, and is given under penalty of perjury pursuant to 28 U.S.C. § 1746.

Executed this ²⁹ day of December, 2005.



Joyce M. Horikawa
Senior Attorney Advisor
Philadelphia, PA

Document 1a

NERH4 * PUBLIC INFORMATION * 11-16-2005
 PAGE 001 * INMATE DATA * 13:23:45
 AS OF 11-16-2005

REGNO...: 19613-039 NAME: BAKER, DARRYL ORRIN

RESP OF: LEW / DESIGNATED, AT ASSIGNED FACIL
 PHONE...: 570-523-1251 FAX: 570-522-7745

FBI NUMBER...: 747008W1 RACE/SEX...: BLACK / MALE
 PROJ REL MT: GOOD CONDUCT TIME RELEASE DOB/AGE....: 06-30-1962 / 43
 PROJ REL DT: 07-02-2012 PAR ELIG DT: N/A
 PAR HEAR DT:

----- ADMIT/RELEASE HISTORY -----						
FCL	ASSIGNMENT	DESCRIPTION	START DATE/TIME	STOP DATE/TIME	DATE/TIME	
LEW	A-DES	DESIGNATED, AT ASSIGNED FACIL	08-26-2005 1235	CURRENT		
S37	RELEASE	RELEASED FROM IN-TRANSIT FACIL	08-26-2005 1235	08-26-2005 1235		
S37	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACIL	08-26-2005 0830	08-26-2005 1235		
ELK	TRANSFER	TRANSFER	08-26-2005 0830	08-26-2005 0830		
ELK	A-DES	DESIGNATED, AT ASSIGNED FACIL	08-12-2004 1851	08-26-2005 0830		
A01	RELEASE	RELEASED FROM IN-TRANSIT FACIL	08-12-2004 1851	08-12-2004 1851		
A01	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACIL	08-12-2004 0850	08-12-2004 1851		
BRO	HLD REMOVE	HOLDOVER REMOVED	08-12-2004 0850	08-12-2004 0850		
BRO	A-BOP HLD	HOLDOVER FOR INST TO INST TRF	07-07-2004 1240	08-12-2004 0850		
B01	RELEASE	RELEASED FROM IN-TRANSIT FACIL	07-07-2004 1240	07-07-2004 1240		
B01	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACIL	07-07-2004 0558	07-07-2004 1240		
LEW	HLD REMOVE	HOLDOVER REMOVED	07-07-2004 0558	07-07-2004 0558		
LEW	A-BOP HLD	HOLDOVER FOR INST TO INST TRF	07-01-2004 1403	07-07-2004 0558		
S42	RELEASE	RELEASED FROM IN-TRANSIT FACIL	07-01-2004 1403	07-01-2004 1403		
S42	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACIL	07-01-2004 1010	07-01-2004 1403		
MCK	TRANSFER	TRANSFER	07-01-2004 1010	07-01-2004 1010		
MCK	A-DES	DESIGNATED, AT ASSIGNED FACIL	06-09-2004 1310	07-01-2004 1010		
MCK	LOCAL HOSP	ESC TRIP TO LOCAL HOSP W/RETN	06-09-2004 1020	06-09-2004 1310		
MCK	A-DES	DESIGNATED, AT ASSIGNED FACIL	04-30-2004 1143	06-09-2004 1020		
MCK	LOCAL HOSP	ESC TRIP TO LOCAL HOSP W/RETN	04-30-2004 0919	04-30-2004 1143		
MCK	A-DES	DESIGNATED, AT ASSIGNED FACIL	04-15-2004 1105	04-30-2004 0919		
MCK	LOCAL HOSP	ESC TRIP TO LOCAL HOSP W/RETN	04-15-2004 0902	04-15-2004 1105		
MCK	A-DES	DESIGNATED, AT ASSIGNED FACIL	04-09-2004 1107	04-15-2004 0902		
MCK	LOCAL HOSP	ESC TRIP TO LOCAL HOSP W/RETN	04-09-2004 0934	04-09-2004 1107		
MCK	A-DES	DESIGNATED, AT ASSIGNED FACIL	09-12-2002 0815	04-09-2004 0934		
S16	RELEASE	RELEASED FROM IN-TRANSIT FACIL	09-12-2002 0815	09-12-2002 0815		
S16	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACIL	09-12-2002 0541	09-12-2002 0815		
LEW	HLD REMOVE	HOLDOVER REMOVED	09-12-2002 0541	09-12-2002 0541		
LEW	A-BOP HLD	HOLDOVER FOR INST TO INST TRF	08-30-2002 1217	09-12-2002 0541		
S18	RELEASE	RELEASED FROM IN-TRANSIT FACIL	08-30-2002 1217	08-30-2002 1217		
S18	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACIL	08-30-2002 1009	08-30-2002 1217		
LOR	TRANSFER	TRANSFER	08-30-2002 1009	08-30-2002 1009		
LOR	A-DES	DESIGNATED, AT ASSIGNED FACIL	07-07-2000 0815	08-30-2002 1009		
S15	RELEASE	RELEASED FROM IN-TRANSIT FACIL	07-07-2000 0815	07-07-2000 0815		
S15	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACIL	07-07-2000 0551	07-07-2000 0815		
LEW	HLD REMOVE	HOLDOVER REMOVED	07-07-2000 0551	07-07-2000 0551		

G0002 MORE PAGES TO FOLLOW . . .

NERH4	*	PUBLIC INFORMATION	*	11-16-2005
PAGE 002	*	INMATE DATA	*	13:23:45
		AS OF 11-16-2005		

REGNO...: 19613-039 NAME: BAKER, DARRYL ORRIN

RESP OF: LEW / DESIGNATED, AT ASSIGNED FACIL
 PHONE...: 570-523-1251 FAX: 570-522-7745

LEW	A-BOP HLD	HOLDOVER FOR INST TO INST TRF	06-30-2000	1431	07-07-2000	0551
S13	RELEASE	RELEASED FROM IN-TRANSIT FACIL	06-30-2000	1431	06-30-2000	1431
S13	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACIL	06-30-2000	1037	06-30-2000	1431
MCK	TRANSFER	TRANSFER	06-30-2000	1037	06-30-2000	1037
MCK	A-DES	DESIGNATED, AT ASSIGNED FACIL	10-18-1995	1630	06-30-2000	1037
3-Q	RELEASE	RELEASED FROM IN-TRANSIT FACIL	10-18-1995	1630	10-18-1995	1630
3-Q	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACIL	10-18-1995	0724	10-18-1995	1630
MIL	HLD REMOVE	HOLDOVER REMOVED	10-18-1995	0724	10-18-1995	0724
MIL	A-HLD	HOLDOVER, TEMPORARILY HOUSED	10-13-1995	1846	10-18-1995	0724
MIL	ADM CHANGE	RELEASE FOR ADMISSION CHANGE	10-13-1995	1845	10-13-1995	1846
MIL	A-PRE	PRE-SENTENCE ADMISSION	10-04-1995	1205	10-13-1995	1845
MIL	PRE REMOVE	PRE SENT DETAINEE REMOVED	08-07-1995	0930	10-04-1995	1205
MIL	A-PRE	PRE-SENTENCE ADMISSION	06-08-1995	1202	08-07-1995	0930

G0002 MORE PAGES TO FOLLOW . . .

NERH4	*	PUBLIC INFORMATION	*	11-16-2005
PAGE 003	*	INMATE DATA	*	13:23:45
		AS OF 11-16-2005		

REGNO...: 19613-039 NAME: BAKER, DARRYL ORRIN

RESP OF: LEW / DESIGNATED, AT ASSIGNED FACIL

PHONE...: 570-523-1251 FAX: 570-522-7745

PRE-RELEASE PREPARATION DATE: 01-02-2012

THE FOLLOWING SENTENCE DATA IS FOR THE INMATE'S CURRENT COMMITMENT.
THE INMATE IS PROJECTED FOR RELEASE: 07-02-2012 VIA GCT REL

-----CURRENT JUDGMENT/WARRANT NO: 010 -----

COURT OF JURISDICTION.....: MICHIGAN, EASTERN DISTRICT
DOCKET NUMBER.....: 94-CR-50065-01-FL
JUDGE.....: GADOLA
DATE SENTENCED/PROBATION IMPOSED: 09-20-1995
DATE COMMITTED.....: 10-18-1995
HOW COMMITTED.....: US DISTRICT COURT COMMITMENT
PROBATION IMPOSED.....: NO

	FELONY ASSESS	MISDMNR ASSESS	FINES	COSTS
NON-COMMITTED.:	\$150.00	\$00.00	\$00.00	\$00.00

RESTITUTION...: PROPERTY: NO SERVICES: NO AMOUNT: \$00.00

-----CURRENT OBLIGATION NO: 010 -----

OFFENSE CODE.....: 381

OFF/CHG: T21:841(A) (1)-DIST OF COCAINE BASE; AID & ABET (2 CNTS)
T21:841(A) (1)-POSS W/I/T/D COCAINE BASE

SENTENCE PROCEDURE.....: 3559 VCCLEA VIOLENT SENTENCE
SENTENCE IMPOSED/TIME TO SERVE.: 235 MONTHS
TERM OF SUPERVISION.....: 5 YEARS
CLASS OF OFFENSE.....: CLASS A FELONY
DATE OF OFFENSE.....: 09-21-1994

G0002

MORE PAGES TO FOLLOW . . .

NERH4 *
PAGE 004 OF 004 *

PUBLIC INFORMATION
INMATE DATA
AS OF 11-16-2005

* 11-16-2005
* 13:23:45

REGNO...: 19613-039 NAME: BAKER, DARRYL ORRIN

RESP OF: LEW / DESIGNATED, AT ASSIGNED FACIL
PHONE...: 570-523-1251 FAX: 570-522-7745

-----CURRENT COMPUTATION NO: 010 -----

COMPUTATION 010 WAS LAST UPDATED ON 08-13-2004 AT ELK AUTOMATICALLY

THE FOLLOWING JUDGMENTS, WARRANTS AND OBLIGATIONS ARE INCLUDED IN
CURRENT COMPUTATION 010: 010 010

DATE COMPUTATION BEGAN.....: 09-20-1995
TOTAL TERM IN EFFECT.....: 235 MONTHS
TOTAL TERM IN EFFECT CONVERTED...: 19 YEARS 7 MONTHS
EARLIEST DATE OF OFFENSE.....: 09-21-1994

JAIL CREDIT.....:	FROM DATE	THRU DATE
	09-22-1994	09-23-1994
	01-03-1995	01-03-1995
	05-11-1995	09-19-1995

TOTAL PRIOR CREDIT TIME.....: 135
TOTAL INOPERATIVE TIME.....: 0
TOTAL GCT EARNED AND PROJECTED...: 886
TOTAL GCT EARNED.....: 500
STATUTORY RELEASE DATE PROJECTED: 07-02-2012
SIX MONTH /10% DATE.....: N/A
EXPIRATION FULL TERM DATE.....: 12-05-2014

PROJECTED SATISFACTION DATE.....: 07-02-2012
PROJECTED SATISFACTION METHOD....: GCT REL

S0055 NO PRIOR SENTENCE DATA EXISTS FOR THIS INMATE

Document 1b

SF 95 (face)

TRT-N92-2004-03801

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.			FORM APPROVED OMB NO. 1105-0008
1. Submit To Appropriate Federal Agency: REGIONAL COUNSEL, NORTHEAST REGIONAL OFFICE U.S. CUSTOMS HOUSE-7TH FLOOR 2ND & CHESTNUT STREETS PHILADELPHIA, P.A. 19106		2. Name, Address of claimant and claimant's personal representative, if any. (See instructions on reverse.) (Number, street, city, State and ZIP Code) DARRYL ORRIN BAKER NO. #19613-039 P.O. BOX 8000 BRADFORD, P.A. 16701 FEDERAL CORRECTION INSTITUTION			
3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input type="checkbox"/> CIVILIAN	4. DATE OF BIRTH 06-30-62	5. MARITAL STATUS DIVORCED	6. DATE AND DAY OF ACCIDENT FEBRUARY 27, 2004	7. TIME (A.M. OR P.M.) 8:10 p.m.	

8. Basis of Claim (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof) (Use additional pages if necessary.)

(SEE ATTACHMENT)

9. PROPERTY DAMAGE

NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, street, city, State, and ZIP Code)

N/A

BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF DAMAGE AND THE LOCATION WHERE PROPERTY MAY BE INSPECTED. (See instructions on the reverse side.)

N/A

10. PERSONAL INJURY/WRONGFUL DEATH

STATE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE NAME OF INJURED PERSON OR DECEDENT.

(SEE ATTACHMENT)

11. WITNESSES

NAME	ADDRESS (Number, street, city, State, and ZIP Code)
(SEE ATTACHMENT)	(SEE ATTACHMENT)

12. (See instructions on reverse) AMOUNT OF CLAIM (in dollars)

12a. PROPERTY DAMAGE N/A	12b. PERSONAL INJURY \$20 MILLION	12c. WRONGFUL DEATH N/A	12d. TOTAL (Failure to specify may cause forfeiture of your rights.) \$20 MILLION
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I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE ACCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM

13a. SIGNATURE OF CLAIMANT (See instructions on reverse side.) <i>Darryl Baker</i>	13b. Phone Number of signatory	14. DATE OF CLAIM 6-13-04
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant shall forfeit and pay to the United States the sum of \$2,000, plus double the amount of damages sustained by the United States. (See 31 U.S.C. 3729.)		CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine of not more than \$10,000 or imprisonment for not more than 5 years or both. (See 18 U.S.C. 287, 1001.)

On February 27, 2004, at approximately 8:05 p.m., I inmate Baker, was assaulted by two (2) Latin King Gang members here at F.C.I. Mckean. At the time of this attack, I was assigned to the ten (10) man cell where I shared my living quarters with (9) other inmates, and several of these inmates saw the attacks being administered to me by the Latin King Gang members. The assault lasted approximately between (7) to (10) minutes, leaving me battered and bruised very badly and in need of serious medical attention. I was in the ten (10) man cell setting in a chair listening to the radio with my head phones on with my eyes closed, and two (2) Latin King Gang members entered the ten (10) man cell and started assaulting me. I suffered a bleeding and bruised nose, swollen left eye, swollen head, cuts, blurred vision, contusion, at the time of this attack by the Latin King Gang members. Officer B. Weseman, was on duty working the evening shift and was not present in the Unit at the time this assault took place. Perhaps Officer Weseman, was asleep, or perhaps he left for a cigarette, or a snack, but he was not in the Unit when I was assaulted by the two (2) Latin King Gang members, and Officer Weseman, was unaware what had took place. Two days later, on February 29, 2004, at approximately 9:10 a.m., I was awoke by Officer Zerowitz, the morning shift Officer, and he requested to see my face for bruises. I was then immediately taken to the Lieutenant Office and while I was there, pictures was taken of my face, left eye, back, hands, chest, where the two (2) Latin King Gang members assaulted me. Then I was immediately taken to the Medical Department where I was seen by a Physician Assistant. The Physician Assistant, denied me any medication for my pain and suffering. The Physician Assistant, denied me medical attention to my left eye. The Physician Assistant was unaware that I had double vision, blurred vision, and that my left eye was off centered. The Physician Assistant, denied me to see a Eye Doctor, or a Eye Specialist, and did not recommend me to see one. Then I was immediately placed in Administrated Detention. While I was there, I made numerous complaints about my left eye and my pain and suffering and was denied any treatment. Then I made my complaint to the Warden and Assistant Warden and i still was denied medical attention for my left eye and pain and suffering. Officer B, weseman, the Assistant Warden, the Warden, Medical Staff, and these Government Officials here at F.C.I. Mckean negligence, for failure

to protect me from being assaulted by two (2) Latin King Gang members, caused me future injuries and future pain and suffering, and also, this negligence by Medical Staff and proximate cause of Medical Staff has caused me future injuries to my left eye and future pain and suffering by these Government Officials.

Respectfully submitted

/s/ Darryl Orrin Baker
DARRYL ORRIN BAKER
REG. NO. # 19613-039
P.O. BOX 8000
F.C.I. MCKEAN
BRADFORD, P.A. 16701

DATED June 13 2004.

SF 95 (Face)

MEDICAL CLAIM

3/30/04

combined with TDC-N98-2004-03801

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.			FORM APPROVED OMB NO. 1105-0008	
1. Submit To Appropriate Federal Agency: REGIONAL COUNSEL, NORTHEAST REGIONAL OFFICE U.S. CUSTOMS HOUSE-7TH FLOOR 2ND & CHESTNUT STREETS PHILADELPHIA, P.A. 19106				2. Name, Address of claimant and claimant's personal representative, if any. (See instructions on reverse.) (Number, street, city, State and ZIP Code) DARRYL ORRIN BAKER NO. #19613-039 P.O. BOX 8000 BRADFORD, P.A. 16701 FEDERAL CORRECTIONAL INSTITUTION		
3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input type="checkbox"/> CIVILIAN		4. DATE OF BIRTH 6-30-62	5. MARITAL STATUS DIVORCED	6. DATE AND DAY OF ACCIDENT FEBRUARY 27, 2004		7. TIME (A.M. OR P.M.) 8:10 p.m.

8. Basis of Claim (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof) (Use additional pages if necessary.)

(SEE ATTACHMENT) MEDICAL CLAIM

9. PROPERTY DAMAGE

NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, street, city, State, and ZIP Code)

N/A

BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF DAMAGE AND THE LOCATION WHERE PROPERTY MAY BE INSPECTED. (See instructions on the reverse side.)

N/A

10. PERSONAL INJURY/WRONGFUL DEATH

STATE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE NAME OF INJURED PERSON OR DECEDENT.

(SEE ATTACHMENT) MEDICAL CLAIM

11. WITNESSES

NAME	ADDRESS (Number, street, city, State, and ZIP Code)
(SEE ATTACHMENT)	(SEE ATTACHMENT)

12. (See instructions on reverse) AMOUNT OF CLAIM (in dollars)

12a. PROPERTY DAMAGE N/A	12b. PERSONAL INJURY \$15 MILLION	12c. WRONGFUL DEATH N/A	12d. TOTAL (Failure to specify may cause forfeiture of your rights.) \$15 MILLION
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I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE ACCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM

13a. SIGNATURE OF CLAIMANT (See instructions on reverse side.) <i>Darryl Baker</i>		13b. Phone Number of signatory	14. DATE OF CLAIM 6-13-04
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant shall forfeit and pay to the United States the sum of \$2,000, plus double the amount of damages sustained by the United States. (See 31 U.S.C. 3729.)		CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine of not more than \$10,000 or imprisonment for not more than 5 years or both. (See 18 U.S.C. 287, 1001.)	

MEDICAL CLAIM

On February 27, 2004, I inmate Baker, was assaulted by two (2) Latin King Gang members, as a result of my attack I sustained injuries to my nose, head, left eye, and emotional pain and suffering. Two (2) days later on February 29, 2004, at approximately 9:10 a.m., I was awoke by the morning shift Officer Mr. Zerowitz, where he ordered to see the injuries I had Sustained. Then I was immediately taken to the Lieutenant office where pictures were taken of my injuries and then I was seen by a Physician Assistant. I did not receive any medication or any treatment for my left eye or my injuries. Then I was taken to Administrative Detention. While I was in Administrative Detention I did not receive any medical attention for my left eye and the injuries I sustained. I put in several sick call forms and was denied treatment by Medical Staff. On March 11, 2004, I was seen by Doctor Beam, and received some eye drops and was denied medical treatment for my left eye. I was released from Administrative Detention on March 26, 2004. This negligence by these Government Officials here at F.C.I. Mckean cause me future injuries to my left eye and I will not be able to hold my old job at General Motors when I am released from prison. This negligence by these Government Officials and proximate cause has caused me future injuries and future pain and suffering.

Respectfully submitted

/s/ Darryl Baker
 DARRYL ORRIN BAKER
 REG. NO. # 19613-039
 P.O. BOX 8000
 F.C.I. MCKEAN
 BRADFORD, P.A. 16701

DATED June 13, 2004.

AFFIDAVIT

SWORN UNDER THE PENALTIES OF PERJURY:

- (1) I inmate Thurman Johnson, was assigned to the ten (10) man cell on February 27, 2004.
- (2) That inmate Baker, was assaulted by to inmates in the ten man cell on February 27, 2004.
- (3) That Officer Weseman, was not patrolling the Unit when this assault took place on inmate Baker.
- (4) That Officer Weseman, was not in the Unit when the assault took place.
- (5) That Officer Weseman, was unaware what took place on February 27, 2004.
- (6) That inmate Baker, was bleeding profusely and suffered a injury to his left eye.

Respectfully submitted

1/s/ Therman Johnson
INMATE THURMAN JOHNSON
REG. NO. # 11013-055
P.O. BOX 8000
F.C.I. MCKEAN
BRADFORD, P.A. 16701

DATED APRIL 15, 2004.

THAT THESE STATEMENTS FROM 1 THRU 6 ARE TRUE UNDER THE PENALTIES OF PERJURY:

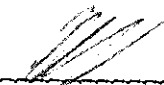
AFFIDAVIT

SWORN AFFIDAVIT UNDER THE PENALTIES OF PERJURY:

- (1) I inmate Tim, was assigned to the ten (10) man cell on February 27, 2004.
- (2) That on February 27, 2004, at approximately 8:05p.m. I was asleep in the ten (10) man cell.
- (3) That when I awoke, I saw inmate Baker, being assaulted by two (2) other inmates.
- (4) Inmate Baker, was bleeding profusely and he had a injury to his left eye.

Respectfully submitted

/s/


INMATE TIMOTHY BRADLEY
REG. NO. #03098-049
P.O. BOX 8000
F.C.I. MCKEAN
BRADFORD, P.A. 16701

DATED APRIL 10, 2004.

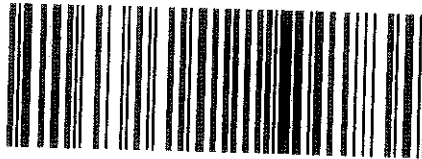
THAT THESE STATEMENTS FROM 1 THRU 4 ARE TRUE UNDER THE PENALTIES OF PERJURY:

Federal Correctional Institution McKean
Name: **DARRYL ORRIN BAKER**
Reg.#: **19613-039**

P.O. Box 8000
Bradford, PA 16701

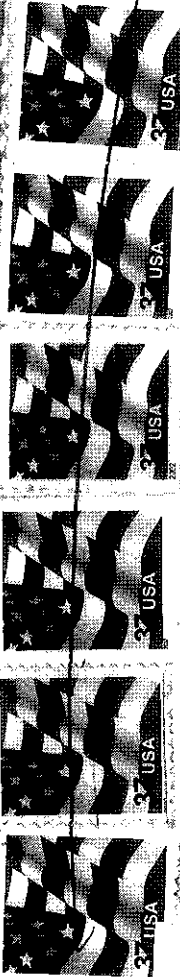
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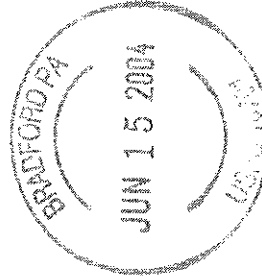


PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS. FOLD AT DOTTED LINE

CERTIFIED MAIL™



REGIONAL COUNSEL, NORTHEAST REGIONAL OFFICE
U.S. CUSTOMS HOUSE-7TH FLOOR
2ND & CHESTNUT STREETS
PHILADELPHIA, P.A. 19106



19106/2912

Document 1c

Memorandum

Northeast Regional Office, Philadelphia, PA
FEDERAL BUREAU OF PRISONS

DATE: December 3, 2004

REPLY TO

ATTN OF: Henry J. Sadowski, Regional Counsel

SUBJECT: Administrative Tort Claim No. TRT-NER-2004-03801

TO: Darryl Orrin Baker, Reg. No. 19613-039
FCI Elkton

Your Administrative Tort Claim No. TRT-NER-2004-03801, properly received by this agency on June 17, 2004,¹ has been considered for settlement as provided by the Federal Tort Claims Act (FTCA), 28 U.S.C. § 2672, under authority delegated to me by 28 C.F.R. § 543.30. You seek compensatory damages in the amount of \$35,000.00 for an alleged personal injury. Specifically, you claim staff did not exercise due care to protect you from being assaulted by two other inmates on February 27, 2004. You contend you were denied appropriate medical care, resulting in injury to your left eye, as well as pain and suffering.

After careful review of this claim, I have decided not to offer a settlement. Investigation reveals you were assaulted by others at the Federal Correctional Institution (FCI), McKean, Pennsylvania, on February 27, 2004. Staff did not become aware of the incident until February 29, 2004. Upon notification of an incident involving you, you were examined by medical staff and provided appropriate treatment for your injuries. You suffered multiple contusions, superficial abrasions, and bruising of the face, right arm, chest and both hands. You complained of eye pain and an initial eye exam was conducted. You refused medication to relieve the pain. Subsequently, you were evaluated by three different eye specialists. You were diagnosed with adhesions to the inferior rectus muscle. Conservative treatment was recommended. An ophthalmologist specializing in orbit injuries, advised that surgery was not worth the risk. The medical record indicates you received appropriate medical care, consistent with community standards.

You did not inform staff of any problem you may have been experiencing with any inmate or group of inmates. Without prior knowledge of a specific problem, the Bureau of Prisons cannot

¹This agency actually received two separate claims from you for an incident which occurred on the same day. Therefore, they have been combined for the purpose of this response.

Darryl Orrin Baker, Reg. No. 19613-039
Claim No. TRT-NER-2004-03801
Page Two

be held responsible for the acts of other inmates. Your failure to properly advise staff of your alleged problems with other inmates prevented staff from taking any action to protect you. There is no evidence of negligence on the part of any Bureau of Prisons' staff in this matter.

Accordingly, your claim is denied. If you are dissatisfied with this decision, you may seek reconsideration from this office or bring an action against the United States in an appropriate United States District Court within six (6) months of the date of this memorandum.

cc: T. R. Sniezek, Warden, FCI Elkton
James F. Sherman, Warden, FCI McKean

Document 1d

ACKNOWLEDGMENT OF RECEIPT

DENIAL OF TORT CLAIM

I, Darryl Orrin Baker, Reg. No. 19613-039, hereby acknowledge receipt this 11th day of December, 2004, of the December 3, 2004, memorandum from Henry J. Sadowski, Regional Counsel, Northeast Region, Federal Bureau of Prisons, informing me of the denial of my tort claim (TRT-NER-2004-03801).

Darryl Baker
Signature

Witnessed this 11th day of December, 2004.

[Signature]
Staff Witness